

ARKANSAS SUPREME COURT

No. CR 06-114

NOT DESIGNATED FOR PUBLICATION

CARL TICE
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 25, 2006

PRO SE MOTION FOR EXTENSION OF TIME
TO FILE POINTS FOR REVERSAL [CIRCUIT
COURT OF POPE COUNTY, CR 2003-180,
HON. DENNIS SUTTERFIELD, JUDGE]

MOTION GRANTED IN PART AND DENIED
IN PART

PER CURIAM

Appellant Carl Tice was convicted of three counts of raping his daughter. Appellant appealed the judgment and the Arkansas Court of Appeals affirmed. *Tice v. State*, CACR 03-1314 (Ark. App. December 15, 2004). Appellant timely filed a *pro se* petition for postconviction relief under Ark. R. Crim. P. 37.1, which, after appointment of counsel, was denied. An appeal from that order is pending in this court.

Counsel appointed to represent appellant in his Rule 37.1 proceeding has now filed in this court a brief asserting that appellant's appeal of the order denying postconviction relief has no merit, and requesting that he be granted permission to withdraw as counsel. While a "no-merit" brief is typically filed in a direct appeal from a judgment, this court has allowed the filing of no-merit briefs in postconviction appeals. See *Hewitt v. State*, ___ Ark. ___, ___ S.W.3d ___ (May 12, 2005) (*per curiam*); *Brady v. State*, 346 Ark. 298, 57 S.W.3d 691 (2001) (*per curiam*).

Anders v. California, 386 U.S. 738 (1967) and Arkansas Supreme Court Rule 4-3(j)(1) set requirements for the withdrawal of counsel for a defendant in a criminal case after a notice of appeal has been filed on the basis that an appeal is without merit. In accordance with *Anders* and Rule 4-3(j)(2), appellant was provided with a copy of the brief and motion to be relieved and notified that he was entitled to submit within thirty days any points for reversal that he desired this court to

consider on appeal.

Appellant, who was scheduled to file his points for reversal no later than April 26, 2006, submitted, prior to that date, a request for an extension that was not properly notarized and received a clerk's extension of seven days, causing the points to be due on May 3, 2006. Appellant filed the instant motion on May 3, 2006, seeking an extension of ninety days' time to submit the points.

This court has consistently held that an extension of time to file points for reversal in an *Anders* appeal will not be granted absent a clear showing that the thirty days allowed by our rule was not sufficient. *Langford v. State*, 317 Ark. 429, 877 S.W.2d 893 (1994) (*per curiam*), citing *Reed v. State*, 278 Ark. 404, 646 S.W.2d 6 (1983) (*per curiam*).¹ Appellant, who is in the custody of the Arkansas Department of Correction, states that circumstances related to his incarceration have resulted in delays concerning his research. As this is the first such extension requested by appellant, the request is granted, although not for the ninety days requested. The appellant's points for reversal are due here no later than fifteen days from the date of this opinion.

Motion granted in part and denied in part.

¹*Reed* refers to Ark. Sup. Ct. R. 11(h) which was this court's rule respecting appeals filed pursuant to *Anders* until Rule 4-3(j) replaced it on May 1, 1993. In all pertinent respects, Rule 4-3(j) is identical to former Rule 11(h).